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14 Attorneys for Defendant

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,	)	No. P1300CR20081339
	)	
18 Plaintiff,	)	Div. 6
	)	
19 vs.	)	
	)	
20 STEVEN CARROLL DEMOCKER,	)	<b>DEFENDANT'S PROPOSED</b>
	)	<b>PRELIMINARY INSTRUCTIONS</b>
21 Defendant.	)	<b>TO VENIRE PANEL</b>
	)	
	)	
	)	

22 Defendant Steven DeMocker, by and through undersigned counsel, hereby  
23 proposes the following preliminary instructions be given by the Court to the venire  
24 panel in advance of any voir dire.

25 Preliminary Comments to the potential jurors.....

26 My name is Thomas Lindberg and I am a Judge of the Superior Court of this  
27  
28

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2010 MAY -3 PM 4:48

JEANNE HICKS, CLERK /

BY: K. Begonia

1 County. I want to thank you for the time and effort you have put in to this process which  
2 is vital to ensuring a fair trial. Sometimes getting a jury in a complicated case that could  
3 possibly end in a sentence of death is difficult and takes time. I appreciate your  
4 cooperation. I am going to speak with you briefly about the case before us and how we  
5 are going to proceed from this point forward.

6 I want to talk with you first about the charges the State has filed and which Mr.  
7 De Mocker faces. My point is not to provide you with all the details. What I want to do  
8 is provide you with enough information so you can make an informed and honest  
9 assessment about whether the nature of this case causes you to doubt your ability to a  
10 fair and impartial juror.

11 The State has charged that Mr. DeMocker committed the crime of First Degree  
12 Murder by killing his former wife, Carol Kennedy, with a golf club in her home in the  
13 Williamson Valley area of Prescott on the evening of July 2, 2008. The State has also  
14 charged Mr. DeMocker with First Degree Burglary in that he is alleged to have entered  
15 her home with the intent to kill her. Mr. DeMocker has entered not guilty pleas to both  
16 charges.

17 These are very serious charges. In most criminal cases, the jury only determines  
18 whether the accused is guilty or not guilty. For those defendants whom the jury finds  
19 guilty, the question of sentence is then decided by the judge, and the jury is not  
20 burdened with deciding the appropriate punishment. However, whenever a defendant is  
21 charged with a crime which carries the death penalty as a possible sentence, the jury  
22 decides not only whether the defendant is guilty or innocent, but also --if he or she is  
23 found guilty--in separate phases of the trial whether the defendant is eligible for the  
24 death penalty or not and if he is eligible, whether the death penalty or life in prison is  
25 the appropriate punishment.

26 I want to advise you in the strongest possible terms that the fact that I (and the  
27  
28

1 attorneys) question you about punishment views now certainly does not mean that Mr.  
2 DeMocker is guilty of any crime. Mr. DeMocker is presumed by law to be innocent.  
3 This questioning does not mean that I think Mr. DeMocker is guilty, or that I or the  
4 attorneys expect him to be convicted. This questioning is required by law in every trial  
5 in which the State seeks to impose the death penalty. We will ask you about your views  
6 concerning punishment before the trial even starts only because this is the only chance  
7 to do so. You are not to draw any conclusions about the case or the evidence from the  
8 fact that we are asking you about punishment before a decision has been made about  
9 whether the defendant is guilty or innocent.

10 Please understand that the jury only has to decide on a defendant's punishment if  
11 the State first proves beyond a reasonable doubt that he committed a crime that permits  
12 the death penalty as one possible punishment and that the defendant is eligible for the  
13 death penalty. If the jury does not find the defendant guilty or finds that the defendant  
14 is not eligible for the death penalty, then the jury's job is done and there is no need for  
15 the twelve jurors who will serve to decide what the punishment should be. However, if  
16 the jury does find beyond a reasonable doubt that the defendant committed a crime for  
17 which the death penalty can be imposed, then additional trials must be held. In a second  
18 trial the jury will consider additional evidence on the question of whether the defendant  
19 is eligible for the death penalty. If the jury determines that the defendant is not eligible  
20 the process is concluded. If the jury determines that the defendant is eligible for the  
21 death penalty, then a third trial will be held where the jury will decide whether Mr.  
22 DeMocker should be sentenced to death or life imprisonment. The jury, guided by the  
23 judge's instructions on the law, decides the punishment under the circumstances.

24 Understand, too, that the death penalty is never automatic, and the jury is never  
25 required to impose the death penalty in any case, no matter what the facts and  
26 circumstances may be. However, when the jury finds itself in a situation where it must  
27

1 consider the death penalty at the end of the trial, the law requires that each possible  
2 juror be questioned at the beginning of the process about any feelings and opinions, if  
3 any, he or she may have about the death penalty or about life in prison and the possible  
4 juror's ability to follow the law.

5 In this case Mr. DeMocker is charged with intentionally killing Carol Kennedy.  
6 If a jury convicts someone of such an intentional killing, the jury can, under some  
7 circumstances, impose the death penalty after hearing additional evidence at the later,  
8 parts of the trial I mentioned earlier.

9 As I have told you, Mr. DeMocker is presumed innocent of all the charges  
10 against him. The law requires that each juror must presume him 100% innocent as we  
11 start the trial. It is the State's responsibility or burden to remove that presumption from  
12 each and every juror by proving that he is guilty of every element of the charges against  
13 him beyond a reasonable doubt. It is the jurors's responsibility to test the proof the  
14 government presents for their consideration. If they are not convinced by that proof  
15 beyond a reasonable doubt, he must be found not guilty, and there will be no sentencing  
16 hearing.

17 In every criminal case, the jury is required to base its decision regarding guilt or  
18 innocence of the defendant on only what is presented to them as evidence and sworn  
19 testimony in court. That requirement is true in a death penalty case. In a death penalty  
20 case because the consequences of a guilty verdict means the maximum punishment the  
21 law allows, jurors are required to not think about sentencing or punishment in the first  
22 part of the trial. First you weigh and test the evidence to see if Mr. DeMocker is guilty  
23 or innocent. If the jury through a unanimous verdict finds Mr. De Mocker guilty of  
24 intentionally murdering Ms. Kennedy, then and only then will evidence to consider the  
25 punishment be presented and weighed. If you do not think that you can separate the two  
26 steps to this process please make sure you bring that to our attention when we speak  
27

1 with you.

2  
3 This morning (afternoon) we will ask each of you individually about your views  
4 concerning punishment for intentional murder, the death penalty and some follow up on  
5 the answers you provided on the questionnaire you filled out several weeks ago. In  
6 fairness to both sides, to the process and to Mr. DeMocker the citizen accused in this  
7 case, it is essential that not draw any conclusions about the case, the evidence or Mr.  
8 DeMocker from the fact that we are asking you about punishment before a decision has  
9 been made about whether he is guilty or innocent.

10 If you are sworn as a juror in this case it will be your duty as an officer of the  
11 court to serve in a fair and impartial manner. At this point, however, I am not as  
12 interested in impartiality as I am in honesty. I am asking you to be painstakingly honest  
13 in your responses to the questions that I and the lawyers will ask you. I am asking that  
14 you search your memory for any knowledge, thoughts or feelings you might have had or  
15 shared about this case.

16 There are no right or wrong answers as long as they are honest and complete  
17 answers. There is nothing wrong with having heard, read or seen about this case. In  
18 fact I, the attorneys and Mr. De Mocker assume that as an informed member of this  
19 community, you have probably heard or expressed an opinion about this case. But, now  
20 that you are a potential juror in this case it becomes very important for me and the  
21 parties to know exactly what you recall. We are not interested only things that you  
22 know to be true. Even if you are not sure about how accurate your memory is, or how  
23 accurate the information is; we want you to tell us about it in as much detail as you can.

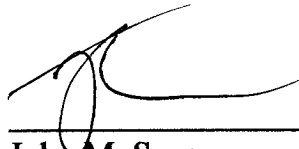
24 We are going to ask you to sit in the jury room as a group and we will call you in  
25 individually to speak with me and the lawyers. I am hereby ordering that, until you  
26 know whether or not you are going to be on the jury in this case, you do not read, listen  
27  
28

1 to, or view anything about this case, whether it's by newspaper, radio, television, or the  
2 internet. Do not Google me; do not Google the lawyers; do not Google the case or the  
3 defendant. Additionally, do not discuss this case with anyone, and that includes other  
4 prospective jurors here today, and if anyone approaches you to discuss the case you  
5 should report that to the Court. You may, of course, tell your employer and family  
6 members that you are involved in jury-selection, but you are ordered not to read or view  
7 anything about this case in any form of media or to discuss the particulars of the case  
8 with anyone. Do not speak with one another about the case, the questions or any other  
9 matter regarding your jury service. I know that this is a very unusual situation for most  
10 people but be assured that you are not in any trouble and that everyone who talks to you  
11 will respect what you have to say. When you come back in one at a time we will start  
12 the conversation by asking you:

- 13 1) Has anything about the circumstances of your life changed since you filled out  
14 the questionnaire?  
15 2) Have you read, seen or heard anything about the case since you filled out the  
16 questionnaire?  
17 3) We will want to know if you did any research on your own about the case.  
18 4) We will ask you if you know of anyone else who has been summonsed for  
19 jury duty in this case or any of the witnesses who may be called to testify.  
20

21 DATED this 3<sup>rd</sup> day of May, 2010.

22 By:

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**ORIGINAL** of the foregoing hand delivered for  
filing this 3<sup>rd</sup> day of May, 2010, with:

Jeanne Hicks  
Clerk of the Court  
Yavapai County Superior Court  
120 S. Cortez  
Prescott, AZ 86303

**COPIES** of the foregoing hand delivered this  
this 3<sup>rd</sup> day of May, 2010, to:

The Hon. Thomas B. Lindberg  
Judge of the Superior Court  
Division Six  
120 S. Cortez  
Prescott, AZ 86303

Joseph C. Butner, Esq.  
Prescott Courthouse basket

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